

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JAIMAR WESTLY GOODMAN,  
TELA MARIE LARKS-GOODMAN, JEVEINA  
KATRICIA LARKS-GOODMAN, JERMAINE  
ANTONIO CHANDLER-GOODMAN, and TIA  
LASHONDA GRAY-GOODMAN, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DIANE PATRICIA GOODMAN,

Respondent-Appellant.

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UNPUBLISHED

January 30, 2001

No. 223381

Wayne Circuit Court

Family Division

LC No. 97-361658

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM

Respondent appeals as of right from the family court's order terminating her parental rights to five minor children pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i), MCL 712A.19b(3)(g); MSA 27.3178 (598.19b)(3)(g), and MCL 712A.19b(3)(j); MSA 27.3178 (598.19b)(3)(j). We affirm.

This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that the termination of those rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*, 462 Mich 354-356.

Here, the court did not clearly err by finding clear and convincing evidence supporting termination pursuant to the three statutory grounds.

The condition that led to this adjudication was respondent's crack cocaine addiction and neglect. In November 1997, respondent left her five young children at home for one week with

no supervision, inadequate food, and no heat or medicine. Although the neglect triggering these proceedings occurred in late 1997, respondent admits to a fifteen-year substance abuse problem and to a previous abandonment episode in August 1997. Respondent also admits she left her children alone in December because she went on a crack cocaine “binge.” Respondent was referred to drug treatment just prior to this incident, in October 1997, but failed to participate in the program.

After her children were removed from the home, respondent enrolled in a six-month, inpatient drug treatment program. While in treatment, respondent improved and complied with the agency plan. Thus, the court allowed her extended visits with her children and the family’s future appeared promising. However, as soon as respondent was released from rehabilitation, she began using drugs again and she refused to enroll in an after-care program. After she began using crack again, respondent failed to stay in contact with her case worker as required, failed to appear for drug screens, failed to appear for visits with her children and she again dropped out of sight for various periods of time. When respondent did appear for drug screens, she frequently tested positive for cocaine. Respondent’s case worker referred her to drug treatment several times during the fall and winter of 1998 and in 1999, but respondent failed to re-enroll for treatment. In fact, despite numerous positive drug tests, respondent repeatedly denied she was using drugs and even accused others of tampering with her urine samples.

As further evidence of respondent’s long-term drug addiction, respondent gave birth to two crack-addicted babies. One child, born in 1993, suffers numerous and severe health problems because of his in-utero exposure to cocaine. Despite his various medical problems and respondent’s agreement to follow a treatment plan, respondent gave birth to another addicted baby in January 1999, who was not part of this adjudication. Immediately following that child’s birth, respondent disappeared again for several days and continued to test positive for cocaine use. Respondent’s case worker again tried to enroll respondent in a drug treatment program and respondent failed to participate. At that point, respondent was regularly missing court appearances and she appeared for just three out of eleven visits with her children in 1999. Respondent’s whereabouts were unknown during trial and no evidence suggests she has ever entered another drug treatment program or that she has stopped using crack cocaine.

Based on respondent’s numerous relapses despite several months of drug treatment and numerous referrals for further treatment, there was clear and convincing evidence that the conditions that led to the adjudication continue to exist. Respondent’s disappearances for days at a time, her failure to maintain housing and her failure to appear for visits with her kids mirror the neglectful behavior respondent displayed when the children were first removed from the home. Based on these factors as well as respondent’s many years of drug addiction and her repeated denials regarding her cocaine use, the court did not clearly err by finding no reasonable likelihood that the conditions will be rectified within a reasonable time, considering the ages of the children. MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i).

Because subsection 19b(3)(c)(i) was established by clear and convincing evidence, we need not address the other grounds for termination because one ground alone is sufficient to terminate parental rights. *Trejo, supra*, 462 Mich 360. However, for the sake of completeness, we also find that the trial court did not clearly err by finding clear and convincing evidence

supporting termination pursuant to subsection 19b(3)(g). Without regard to respondent's intent, she failed to provide proper care or custody for the children and there is no reasonable expectation that she will be able to provide proper care and custody within a reasonable time considering the ages of the children. When police first entered respondent's home to rescue the children in December 1997, two of the children were in poor hygienic health and the house was filthy. There were mattresses strewn throughout the house and garbage littered the floor. Respondent left the children with no supervision and only three loaves of bread in the refrigerator to eat. The children were forced to use the stove to heat the house because the furnace was inoperable, and one child, who suffers from severe asthma, did not have any medicine for his breathing machine.

During the proceedings, case workers learned that respondent no longer maintained satisfactory housing for the family. Respondent provided no explanation regarding how she planned to procure and maintain a home for the children. However, given respondent's immediate relapse into cocaine use after her release from drug treatment, it is unlikely that she was planning for the children's return. Further, respondent's repeated failure to comply with the agency agreement or to keep in contact with her case worker, as well as her failure to reenter treatment, evidence an unwillingness to comply with the plan to regain custody. Moreover, respondent disappeared for several days and her whereabouts were unknown during the permanent custody trial. She also missed so many visitations with her children that the children expressed a desire not to continue the process.

One of respondent's children has severe medical and developmental problems and others have emotional problems that require counseling. Given respondent's continued drug use and her inability to comply with the most basic responsibilities of caring for her children, the court did not clearly err by finding a failure to provide proper care or custody and that there is no reasonable expectation that she will be able to do so within a reasonable time.

This conclusion is supported by this Court's holding in *In re Conley*, 216 Mich App 41; 549 NW2d 353 (1996). In *Conley*, this Court found clear and convincing evidence supported termination pursuant to 19b(3)(c)(i) and (g) where the respondent had a long-term alcohol abuse problem and, after numerous attempts, failed to overcome her addiction. *Id.* at 43. This case is similar in that, despite a 2 1/2-year attempt to provide respondent with drug treatment, counseling and training, she has been unable to maintain a drug-free status.

The trial court also found clear and convincing evidence that there is a reasonable likelihood that, based on respondent's conduct, the children will be harmed if returned to respondent's home, pursuant to 19b(3)(j). From the above evidence, it appears that respondent's tendency is to disappear for periods of time while she's using cocaine heavily. When she does so, respondent fails to notify anyone of her plans and ignores the care of her children. Her periodic binges also take precedence over providing basic necessities including suitable housing, food, heat and medicine. Again, there is no evidence that respondent has sought further treatment and her history of relapses places the children, some of whom have special needs, at significant risk of future abandonment and harm. Thus, the trial court did not clearly err in finding clear and convincing evidence for termination pursuant to 19b(3)(j).

Respondent contends that the court should not have terminated her parental rights because termination is not in the best interests of the children. Respondent erroneously relies on *In re Hall-Smith*, 222 Mich App 470; 564 NW2d 156 (1997), for the proposition that there is a two-prong test for terminating parental rights and that there must be a showing that termination is clearly in the child's best interests. *Id.* at 473-474. Not only is respondent's argument a misreading of this Court's holding in *Hall-Smith*, the ruling in that case was specifically rejected by the Supreme Court in *Trejo*, *supra*, 462 Mich 341. In *Trejo*, the Supreme Court ruled that, once the court has found that one or more grounds for termination have been established by clear and convincing evidence, subsection 19b(5) "provides an opportunity for the court to find that termination is clearly not in the child's best interest." *Trejo*, *supra*, 462 Mich 354. Although the establishment of a ground for termination curtails a parent's right to custody and control of the child, the statute allows "the court to consider evidence, within the whole record, that termination is clearly not in a child's best interests." *Id.* at 356. However, despite respondent's argument on appeal, "[t]he statute does not require that the court affirmatively find that termination *is in* the child's best interest." *Id.* at 357 (emphasis added).

Thus, contrary to respondent's argument, the trial court was not required to find that termination was in the childrens' best interests before terminating her parental rights. Further, petitioner had no additional burden to show that termination was in the childrens' best interests. The court had the *option* of finding, based on the whole record, that termination would not serve the children's best interests, but it did not do so. Rather, the court stated that it would not be in the childrens' best interests to return to respondent because they needed a stable home. This conclusion was supported by the record given respondent's relapse, her frequent disappearances, and her failure to comply, even minimally, with the agency agreement. Respondent argues that evidence showed she was doing well in drug treatment and that the visits with her children showed a strong bond between them. This assertion completely ignores the overwhelming evidence that, although respondent showed some progress in the first half of 1998, she relapsed into heavy drug use and eschewed all further attempts at help. Further, as both petitioner and the children argue in their appeal briefs, any bonds existing between respondent and the children were broken when she failed to visit them on a regular basis. Thus, we conclude that the court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination and did not err in concluding that returning the children to respondent would not be in the best interests of the children.

Affirmed.

/s/ Henry William Saad  
/s/ Helene N. White  
/s/ Joel P. Hoekstra